

**PROCEDURE TO ASSIST PRACTITIONERS BEFORE
UNITED STATES DISTRICT COURT JUDGES
RICHARD J. ARCARA AND WILLIAM M. SKRETNY
IN PROCEEDINGS UNDER THE SENTENCING REFORM ACT OF
1984
IN THE WESTERN DISTRICT OF NEW YORK**

EFFECTIVE AUGUST 1, 1996

The following Guidelines are hereby established to govern sentencing proceedings before United States District Court Judges Richard J. Arcara and William M. Skretny under the Sentencing Reform Act of 1984 (Pub.L. 98-473, Title II, c. II, § § 211-39; see 18 U.S.C. § 3551 et seq.), effective November 1, 1987, and Federal Rule of Civil Procedure 32, as amended December 1, 1994.

These Guidelines are intended to provide adequate time for:

- 1) the United States Probation Office (the “Probation Office”) to prepare and disseminate the presentence report (“PSR”);
- 2) the parties to make, and the Court to rule upon, any objections to the PSR and any motions regarding sentencing; and
- 3) other procedures contemplated by the Sentencing Reform Act and the Sentencing Guidelines.

1. Scheduling of Sentencing Proceedings. Sentencing proceedings shall be scheduled by the Court no earlier than ninety-five (95) days following entry of a guilty plea or verdict of guilty unless the Court finds that, in the interests of justice, an earlier date should be set.

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2. Presentence Report. The initial PSR, including guideline computations, shall be completed and disseminated to the defendant, defense counsel and the Assistant United States Attorney assigned to the case at least forty-five (45) days prior to the scheduled sentencing proceedings, unless the minimum period is waived by the defendant. The Probation Office*'s recommendation on the sentence shall not be disclosed to the parties unless otherwise ordered by the Court.

3. Presentence Conference. If a party disputes any legal conclusions, sentencing factors or findings of facts material to sentencing included in the PSR , or seeks the inclusion in the PSR of any additional legal conclusions, sentencing factors or facts material to sentencing, it is that party*'s obligation to seek administrative resolution of such disputes by conferring with opposing counsel and the Probation Office prior to filing the pleading referenced in paragraph 4. This presentence conference is mandatory except when the PSR is undisputed. No party may file a written objection to the PSR, as provided in

paragraph 4, unless he or she has conferred with opposing counsel and the Probation Office in a good faith effort to resolve the disputed matter.

4. “Statement of Parties With Respect to Sentencing Factors”. No later than twenty-four (24) days prior to the scheduled sentencing proceedings, counsel for the defendant and the Government shall file a pleading entitled, “Statement of Parties With Respect to Sentencing Factors,” (the “Statement”), in accordance with Section 6A1 .2 of the Sentencing Guidelines and/or any subsequent rules and policies published by the United States Sentencing Commission. The Statement should either adopt the findings of the PSR or state with particularity any objections thereto.

5. Objections to “Statements with Respect to Sentencing Factors”. An objecting party shall certify in the Statement that it has conferred with opposing counsel and the Probation Office in a good faith effort to resolve the objection. An objecting party shall file along with the Statement any material relevant to resolution of its objections and a memorandum of law, citing legal authority, in support of its objections. The Statement also should include any and all motions related to sentencing, including motions for upward or downward departures, along with a memorandum of law, citing legal authority, in support of the motion and any material relevant thereto.

6. Filing Requirements for Objections to “Statement with Respect to Sentencing Factors”. The Statement shall be filed with the Clerk of the Court and contemporaneously served upon the Probation Office and opposing counsel. A party’s failure to file timely a Statement in accordance with the procedures set forth herein may result in that party’s objections and/or motions being denied for failure to comply with these Guidelines, without consideration of the merits of the objections and/or motions by the Court.

7. Response to Objections Raised by Opposing Party’s “Statement with Respect to Sentencing Factors”. No later than fourteen (14) days prior to the scheduled sentencing proceedings, counsel shall file a written response to any objections and/or motions raised by the opposing party in its Statement. The response shall include any material relevant to resolution of the objections and/or motions and a memorandum of law, citing legal authority, either supporting or opposing the objections and/or motions raised by the opposing party. If no objections or motions are raised by the opposing party, then no response is required. If a party fails to file a timely response in accordance with the procedures set forth herein, the Court will assume that the party does not oppose the objections and/or motions raised by the opposing party in its Statement, and may, if appropriate, grant the opposing party the relief requested. The response shall be filed with the Clerk of the Court and contemporaneously served upon the Probation Office and opposing counsel.

8. Final Presentence Report. No later than seven (7) days prior to the scheduled sentencing proceedings, the Probation Office shall submit to the Court the final PSR, which shall include guideline computations and an addendum setting forth any unresolved objections and/or motions, the grounds for those objections and/or motions, and the Probation Office's comments on the objections and/or motions. The Probation Office shall contemporaneously provide copies of the final PSR to the defendant, defense counsel and the Assistant United States Attorney assigned to the case.

9. Character Letters. No later than seven (7) days prior to the scheduled sentencing proceedings, counsel for the parties shall provide to the Probation Office any character letters and/or other similar materials that they want the Court to review and consider when imposing sentence. Copies of such materials shall be contemporaneously served upon opposing counsel.

10. Sentencing Hearing. At the sentencing hearing, the Court shall afford counsel for the defense and for the Government an opportunity to comment on the Probation Office's determinations in the PSR on any other matters relating to the appropriate sentence, and shall resolve any remaining unresolved objections and/or motions either by ruling on the objections and/or motions or by determining that no ruling is necessary because the disputed issue will not affect sentencing.

11. Motion for Extension of Time. Counsel for the parties shall strictly adhere to the time deadlines contained herein. The Court may, however, upon written motion and

good cause shown, grant either an appropriate extension of time for counsel to prepare and file necessary papers or an adjournment of the sentencing proceedings.

12. Filing Requirements for Motion for Extension of Time. Such a motion shall be filed at least two days prior to the deadline sought to be extended and shall be accompanied by an affidavit from counsel stating why the extension or adjournment is being requested, why it is necessary, whether any prior extensions or adjournments have been granted, and that counsel has discussed the motion with opposing counsel and that opposing counsel either opposes or does not oppose the motion. The motion shall be filed with the Clerk of the Court and contemporaneously served upon the Probation Office and opposing counsel. A courtesy copy of the motion shall also be provided to the Sentencing Court's chambers. The Court shall rule upon the motion as soon as possible. However, the moving party will not be relieved from the deadline sought to be extended unless and until the Court has granted the motion, i.e., the mere making of the motion will not stay the deadline.

13. Formal Pleading Required. The pleading requirements contained in paragraphs 4, 7, 11 and 12 of these Guidelines will only be satisfied by a formal pleading and will not be satisfied by a letter or a telephone call from counsel.

Dated: July 30, 1996